

INTRADEPARTMENTAL CORRESPONDENCE

April 6, 2017
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TO: The Honorable Board of Police Commissioners

FROM: Chief of Police

SUBJECT: IN-CUSTODY DEATH FID NO. 034-16

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Honorable Members:

The following is my review, analysis, and findings for In-Custody Death (ICD), Force Investigation Division (FID) No. 034-16. A Use of Force Review Board (UOFRB) was convened on this matter on March 13, 2017. In this case, the recommended findings were not unanimous with a minority opinion rendered regarding the Less-Lethal Force findings for Officer [REDACTED] Serial No. [REDACTED]

I have carefully weighed each opinion, considered the case in its entirety and adopted the recommendations of the minority opinion. I hereby submit my findings in accordance with Police Commission policy.

SUMMARY AND ANALYSIS¹

On June 9, 2016 at approximately 1825 hours, Officers [REDACTED] Serial No. [REDACTED] and [REDACTED] Serial No. [REDACTED] Harbor Gang Enforcement Detail (GED), responded to a GED unit request at McDonald Street and C Street.

According to Officer [REDACTED], they were responding to a request for a *gang unit* to assist with determining if any of the subjects at scene were in *violation of any injunction*. [REDACTED] immediately recognized one of the subjects as A. Aguilar, because [REDACTED] arrested him on a prior occasion for an *injunction violation*. [REDACTED] and Officer [REDACTED] determined that Aguilar was in violation of a court ordered gang injunction and placed him under arrest.

According to Officer [REDACTED] conducted a search for *weapons* prior to placing Aguilar in the backseat of their police vehicle. While transporting Aguilar to Harbor Station for booking, [REDACTED] observed that Aguilar was *fidgeting*. Upon arrival, they took Aguilar to Sergeant [REDACTED] Serial No. [REDACTED] Watch Commander, Harbor Patrol Division, for the intake questions. During the intake questions, Aguilar *couldn't stay still and kept moving around*.

[REDACTED]

According to Officer [REDACTED] based on [REDACTED] observations of Aguilar's *behavior, nonstop talking, fidgeting, and inability to stay still*, [REDACTED] formed the opinion that Aguilar was under the influence of a *stimulant*. Considering those factors, along with [REDACTED] knowledge of Aguilar's previous narcotics arrests, [REDACTED] requested authorization to conduct a strip search of Aguilar to ensure he did not have narcotics on his person. Sergeant [REDACTED] then gave approval for the strip search.

According to the officers, they took Aguilar to the *strip search area*, removed his handcuffs, and directed him to *face the wall*. During the strip search Aguilar stated he was *hot* and then asked if he could *take off his shirt*. Aguilar would not remain facing the wall despite multiple commands to do so. Aguilar lifted up his shirt and the officers observed a *plastic bindle* in his *helly hutton*. Officer [REDACTED] removed the bindle and placed it in Aguilar's property bag.

Note: The investigation later revealed that the bindle contained methamphetamine.

According to Officer [REDACTED] Aguilar *kept reaching to his buttocks area, putting his hands inside his boxers*. [REDACTED] ordered Aguilar to *turn around and put his hands on the wall*. As Aguilar turned to face the wall, he simultaneously removed a *good sized white colored bindle* from inside of his boxers and put it in his mouth prior to putting his hands on the wall. [REDACTED] believed that Aguilar was attempting to ingest narcotics and *pushed the back of his head toward his chest to prevent him from swallowing* the possible narcotics. [REDACTED] ordered Aguilar to *spit it out*, but Aguilar did not comply.

According to Officer [REDACTED] Officer [REDACTED] ordered Aguilar to *put his hands on the wall, and stop moving*. Aguilar *faced the wall* and then reached into his underwear with his left hand and then moved his left hand to his mouth. Officer [REDACTED] stated, "*He's swallowing dope.*" Officer [REDACTED] pushed Aguilar's head down so he wouldn't *swallow* the narcotics while Officer [REDACTED] attempted to control his arms.

According to Officer [REDACTED] Aguilar went to the floor on *all fours* as [REDACTED] continued to push his head forward as he was given commands to *spit it out*. Aguilar ignored [REDACTED] commands and started to *resist being detained*. [REDACTED] attempted to get control of Aguilar's hands but was unable to get control. [REDACTED] told Officer [REDACTED] that [REDACTED] was going to *tase* Aguilar. [REDACTED] then drew [REDACTED] TASER, removed the cartridge, and attempted to *dry stun* Aguilar on his back (Less-Lethal Use of Force and Additional Tactical Debrief Topics – Use of Force Warning and Proper Use of Taser in Drive-Stun Mode).

According to Officer [REDACTED] Aguilar went to the ground and was *combative* while *pushing* the officers away. [REDACTED] used a firm grip on *one of Aguilar's legs* to *pull it out of the way* and then told Officer [REDACTED] to *get the TASER* in order to control Aguilar. [REDACTED] observed Officer [REDACTED] place the TASER on Aguilar's back in *close contact* mode. [REDACTED] heard the TASER *deploy*, but it didn't have *any effect* on Aguilar (Non-Lethal Use of Force).

According to Officer [REDACTED] Aguilar *pushed off the ground*, turned around, and then attempted to *grab* the TASER from [REDACTED] *backed up*, re-inserted the TASER cartridge, and told Officer [REDACTED] "*stand by, stand by, stand by*" to let [REDACTED] know [REDACTED] was going to *use* the TASER. [REDACTED] then discharged the TASER at Aguilar in probe mode with the probes making contact near the

navel area. The TASER had no effect and Aguilar *ripped them out and threw them* at Officer [REDACTED] (Less-Lethal Use of Force).

According to Officer [REDACTED], Aguilar *stood up*, faced them and attempted to grab [REDACTED] arms. [REDACTED] pinned Aguilar to the wall to prevent Aguilar from reaching for their guns while Officer [REDACTED] continued to use the TASER against Aguilar with no effect. Aguilar continued to resist and took a *fighting stance*. Aguilar had control of his arms and Officer [REDACTED] *rased him again*, but they still could not gain control of Aguilar (Non-Lethal Use of Force).

According to Officer [REDACTED], they kept *moving around* inside the strip search area and they were unable to get control of Aguilar's arms to handcuff him. [REDACTED] attempted to *dry stun* Aguilar again in the *arm or shoulder area* but Aguilar *kept trying to grab* the TASER. [REDACTED] then observed Officer [REDACTED] hit Aguilar with a *closed fist, two or three times*, in the face (Less-Lethal Use of Force).

According to Officer [REDACTED], Aguilar turned towards the wall, but continued to resist and was still *combative*. [REDACTED] *punched* Aguilar *three times in the cheek* in an attempt to stop his resistance and get control of him. Aguilar then fell to the floor and began *choking* at which time they were able to handcuff Aguilar's hands behind his back (Non-Lethal Use of Force and Additional Tactical Debrief Topics – Punches to Bony Areas).

After handcuffing Aguilar, Officers [REDACTED] and [REDACTED] observed that Aguilar was continuing to choke. According to Officer [REDACTED], Sergeant [REDACTED] arrived at their location and requested a Rescue Ambulance (RA) as they simultaneously took the handcuffs off and attempted abdominal thrusts to clear Aguilar's airway. According to the officers, when they observed Aguilar was no longer breathing, they began cardiopulmonary resuscitation (CPR).

The officers continued providing CPR at the direction of Sergeant [REDACTED] until relieved by Los Angeles Fire Department (LAFD) personnel. Aguilar failed to respond to medical treatment and was pronounced deceased at 1959 hours.

Note: During an autopsy conducted by the Los Angeles County Coroner's Office, Doctor [REDACTED] recovered a plastic bindle containing heroin from back of Aguilar's throat. Doctor [REDACTED] determined the cause of death to be asphyxiation due to an obstructed airway.

During review of the incident, no Debriefing Points were noted.

ADDITIONAL TACTICAL DEBRIEF TOPICS

Simultaneous Commands (Non-Conflicting) – The investigation revealed that Officers [REDACTED] and [REDACTED] were giving simultaneous commands to the suspect. Although the commands were non-conflicting, the officers are reminded that simultaneous commands can sometimes lead to confusion and non-compliance. I will direct that this be a topic of discussion during the Tactical Debrief.

Use of Force Warning – The investigation revealed that the officers did not give Aguilar a use of force warning prior to utilizing the TASER and did not provide a reason for not giving the use of force warning. The officers are reminded to provide a warning, when feasible, prior to using a TASER. Additionally, if a warning is not feasible, the officers are reminded to provide specific reasons to justify their actions. I will direct that this be a topic of discussion during the Tactical Debrief.

Proper Use of TASER in Drive-Stun Mode – The investigation revealed that Officer [REDACTED] removed the TASER cartridge prior to activating [REDACTED] TASER in drive-stun mode. Officer [REDACTED] is reminded that for maximum effectiveness, the cartridge should remain attached to the TASER when the TASER is applied in drive-stun to an area of the body away from the probe impact site. I will direct that this be a topic of discussion during the Tactical Debrief.

Punches to Bony Areas – The investigation revealed that Officer [REDACTED] punched Aguilar with a closed fist three times to the bony portion of his face. Fist strikes should be used primarily on soft tissue areas to prevent injury to an officer's hands. Officer [REDACTED] is reminded to consider using other force options prior to using fist strikes to bony areas. I will direct that this be a topic of discussion during the Tactical Debrief.

FINDINGS

Tactics – Tactical Debrief, Officers [REDACTED] and [REDACTED]

Non-Lethal Use of Force – In Policy, No Further Action, Officer [REDACTED]

Less-Lethal Use of Force – Out of Policy, Administrative Disapproval, Officer [REDACTED]

TACTICS

Department policy relative to Tactical Debriefs is: "The collective review of an incident to identify those areas where actions and decisions were effective and those areas where actions and decisions could have been improved. The intent of a Tactical Debrief is to enhance future performance." (Los Angeles Police Department Manual, Volume 3, Section 792.05)

The evaluation of tactics requires that consideration be given to the fact that officers are forced to make split-second decisions under very stressful and dynamic circumstances. Tactics are conceptual and intended to be flexible and incident specific, which requires that each incident be looked at objectively and the tactics be evaluated based on the totality of the circumstances.

Each tactical incident also merits a comprehensive debriefing. In this case, there were identified areas where improvement could be made and a Tactical Debrief is the appropriate forum for the involved personnel to review the officer's individual actions that took place during this incident.

Therefore, I will direct that Officers [REDACTED] and [REDACTED] attend a Tactical Debrief and that the specific identified topics are also covered.

Note: Additionally, the Tactical Debrief shall also include the following mandatory discussion points:

- Use of Force Policy;
- Equipment Required/Maintained;
- Radio and Tactical Communication (including Code Six);
- Tactical De-escalation;
- Command and Control; and,
- Lethal Force.

NON-LETHAL USE OF FORCE

It is the policy of this Department that personnel may use only that force which is "objectively reasonable" to:

- *Defend themselves;*
- *Defend others;*
- *Effect an arrest or detention;*
- *Prevent escape; or,*
- *Overcome resistance (Los Angeles Police Department Manual, Volume I, Section 556.10).*

Strikes and/or kicks can be used when such force is objectively reasonable to accomplish the following:

- *Overcome active resistance to arrest;*
- *Create distance from a suspect;*
- *Protect self or others from injury;*
- *Stop or stun a suspect; or,*
- *Distract a suspect (Los Angeles Police Department Use of Force – Tactics Directive No. 14, Strikes and Kicks – December 2012).*

Officer [REDACTED] -- Firm grip, bodyweight, and strikes

According to Officer [REDACTED] used a firm grip on one of Aguilar's legs to pull it out of the way.

Officer [REDACTED] recalled,

I was trying to like move his foot out of the way, because I was behind him. So I kind of I pulled I kind of pulled one of his legs, just to try to get it out of the way.

According to Officer [REDACTED] Aguilar stood up, faced them and attempted to grab [REDACTED] arm. [REDACTED] then used [REDACTED] bodyweight to pin Aguilar to the wall to prevent Aguilar from reaching for their guns.

Officer [REDACTED] recalled,

[REDACTED] stood up and he turned around and he faced me, and he kind of, he's trying to grabbing my arms, and so I was trying to hold him hold his arms up, because I didn't want him to either reach for me gun or reach for my partner's gun. So I was trying to hold [REDACTED] up with his arms, and I was kind of I had him pinned to the wall.

According to Officer [REDACTED] Aguilar continued to resist. [REDACTED] then used three closed fist strikes to the right side of Aguilar's face in an attempt to control him.

Officer [REDACTED] recalled,

After the tase, he turned around and he still he was still like resisting with us. And I'm not sure if my partner still had the TASER in the hand in his hand, but I my partner was on his left side, trying to control him. And I was still trying to get his arm out to handcuff him behind. But it wasn't working, so I punched him three times...in his right face.

Based upon the totality of the circumstances, the UOFRB determined, and I concur, that an officer with similar training and experience as Officer [REDACTED] while faced with similar circumstances, would believe this same application of non-lethal force would be reasonable to overcome Aguilar's resistance.

Therefore, I find Officer [REDACTED] Non-Lethal Use of Force to be objectively reasonable and In Policy, No Further Action..

LESS-LETHAL USE OF FORCE

It is the policy of this Department that personnel may use only that force which is "objectively reasonable" to:

- *Defend themselves;*
- *Defend others;*
- *Effect an arrest or detention;*
- *Prevent escape; or,*
- *Overcome resistance (Los Angeles Police Department Manual, Volume I, Section 556.10).*

The TASER may be used on suspects who are violent, or who pose an immediate threat to themselves or others when an officer believes:

[REDACTED]
[REDACTED]

- *Attempts to subdue the suspect with other tactics have been, or will likely be, ineffective in the situation; or*
- *There is reasonable belief that it will be unsafe for officers to approach within contact range of the suspect.*

Verbal threats of violence by a suspect do not alone justify the use of the TASER. Any threat must be a credible one (Use of Force Tactics Directive No. 4.4, June 2015).

Officer [REDACTED] - TASER, X26P, one five-second activation and one two-second activation in drive-stun mode, three five-second activations in probe mode.

According to Officer [REDACTED] Aguilar went to the floor on *all fours* and started to *resist being detained*. [REDACTED] attempted to control Aguilar's hands but was unable to *get control*. [REDACTED] drew [REDACTED] TASER, removed the cartridge, and applied the TASER to Aguilar's back. Aguilar then stood up and attempted to take the TASER from [REDACTED]. [REDACTED] re-inserted the TASER cartridge and then activated the TASER in probe mode, striking Aguilar on his right side. Aguilar continued to resist and [REDACTED] activated the TASER two additional times in probe mode to stop Aguilar's actions.

Officer [REDACTED] recalled,

At that point, I believe I remember telling my partner, I'm going to tase him, I'm going to tase him. As I did that, I stepped back, took my TASER out, took the cartridges out, and attempted to do a dry stun on him. That's when he pushed off the ground. And as I was about to dry stun him, he turned around and tried to grab the TASER from me.

So I backed up, reinserted the probes, and told my partner, stand by, stand by, stand by, to let him know that I'm going to deploy the probes on him. Shot the probes at his navel area. As soon as I made contact, he immediately grabbed them, ripped them out, and threw them at me.

I tried to dry stun him again with the probes, the wires still hanging out in his arm area, shoulder area. He just kept trying to grab it like that, trying to grab the TASER, pushing me away, and that's when my partner proceeded to strike him.

Based on the totality of the circumstances, I have determined that an officer with similar training and experience as Officer [REDACTED] would not reasonably believe Aguilar's actions were violent or posed an immediate threat to himself or others at the time Officer [REDACTED] applied the TASER to Aguilar's back and therefore, the use of Less-Lethal Force would not be objectively reasonable.

Therefore, I find Officer [REDACTED] Less-Lethal Use of Force to not be objectively reasonable and Out of Policy, Administrative Disapproval.

[REDACTED]
[REDACTED]
[REDACTED]

AUDIO/VIDEO RECORDINGS

Digital In-Car Video System (DICVS) – Officers [REDACTED] and [REDACTED] police vehicle was equipped with DICVS. Their DICVS captured Aguilar's actions in the backseat of their vehicle while being transported to Harbor Station.

Body Worn Cameras (BWV) – Harbor Area Patrol officers were not equipped with BWV at the time of this incident.

Department Video – Harbor Division jail facility was equipped with surveillance cameras that captured Aguilar being interviewed by Sergeant [REDACTED] upon his arrival at Harbor station. The cameras also captured the officers taking Aguilar to the strip search area and LAFD emergency personnel pulling Aguilar into the hallway to administer medical treatment.

No cameras captured the use of force or Aguilar ingesting narcotics.

COMMAND AND CONTROL

Sergeant [REDACTED] responded and assumed the role of Incident Commander, requested an RA, and ensured the separation and monitoring of the involved officers. Sergeant [REDACTED] actions were consistent with Department supervisory training and my expectations of a field supervisor at a critical incident.

GENERAL TRAINING UPDATE (GTU)

On July 7, 2016, Officers [REDACTED] and [REDACTED] attend a GTU. In addition to the mandatory topics, Officers [REDACTED] and [REDACTED] received training on In-Custody Death.

Respectfully,



CHARLIE BECK
Chief of Police

Date: 4-6-17